Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 1977
No. 77-1833

SUN OIL COMPANY OF PENNSYLVANIA,
Appellant

v.

UNEMPLOYMENT COMPENSATION BOARD OF REVIEW OF COMMONWEALTH OF PENNSYLVANIA,
Appellee

and

LOCAL (8)-901 OF THE OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION on Behalf of Its Members and All Others Similarly Situated; GEORGE SWERDON, JR., ROBERT A. CROWLEY, LOUISE E. CHASSE, WILLARD A. SCHOLL, EDWARD J. FADDEN, NEANIE WILLIS, ROBERT MILLER, ANDREW MASSORELLI, ANTHONY G. ARCOMONE, IRVIN M. BUTLER, on Their Own Behalf and on Behalf of All Other Claimants Similarly Situated,
Intervenor-Appellees

On Appeal From the Supreme Court of Pennsylvania

MEMORANDUM OF APPELLEE UNEMPLOYMENT COMPENSATION BOARD OF REVIEW OF COMMONWEALTH OF PENNSYLVANIA

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STATEMENT OF THE CASE

In Pennsylvania,[1] workers who are out of work because of a labor dispute are eligible for unemployment compensation benefits if the work stoppage is deemed a lockout, but are ineligible if it is a strike.[2] The Unemployment Compensation Board of Review of Pennsylvania (hereinafter "the Board of Review"), the administrative agency charged with the responsibility for making the final administrative decision regarding the eligibility of all applicants for unemployment compensation, found as a fact that the labor dispute in the instant case between Sun Oil Company and Local (8)-901 of the Oil, Chemical and Atomic Workers International Union was a lockout and awarded benefits to the employes (A22-A39).

Sun Oil appealed from the administrative decision to the Commonwealth Court of Pennsylvania, raising two issues. Sun Oil initially challenged the Board of Review's finding of fact that the work stoppage was a lockout. Alternatively, Sun Oil contended that, even if the stoppage was a lockout, the Pennsylvania statute which authorized the payment of unemployment compensation benefits to lockout victims conflicted with the Supremacy Clause of the United States Constitution and was therefore unconstitutional. Thus the first issue involved a question of fact, while the second was plainly an issue of constitutional law.

[1] Pennsylvania Unemployment Compensation Law, Section 402(d):

> "An employe shall be ineligible for compensation for any week—
>
> (d) In which his unemployment is due to a stoppage of work, which exists because of a labor dispute (other than a lockout)."

Pa. Stat. Ann., tit. 43, §802(d).

[2] Appellants' continual assertions that "strikers" receive unemployment compensation benefits in Pennsylvania and that employers are thus compelled to subsidize strikes, are totally belied by reference to the law.

On June 4, 1975, the Commonwealth Court affirmed the Board of Review's finding of fact that the labor dispute was a lockout, holding that "[t]he record supports this finding and, therefore, it must not be disturbed on appeal. [citation omitted] . . ." *Unemployment Comp. Bd. of Review v. Sun Oil Company*, 19 Pa. Cmwlth. 447, 338 A.2d 710 (1975) (A12). The Court also upheld the validity of the Pennsylvania statute and rejected Sun Oil's preemption argument:

> On its face, we find no persuasive reasons to invalidate Section 402(d) of the Act under the Supremacy Clause nor do we find any palpable infringement of federal policy. Unemployment Comp. Bd. of Review v. Sun Oil Company, 19 Pa. Cmwlth. 447, 338 A.2d 710 (1975) (A18).

Sun Oil appealed from both the factual and legal determinations to the Pennsylvania Supreme Court, which again affirmed both and dismissed the appeal in all respects. *Unemployment Comp. Bd. of Review v. Sun Oil Company of Pa.*, 476 Pa. 589, 383 A.2d 519 (1978), (A2-A7).

Since the highest court in Pennsylvania upheld the validity of a State statute, by deciding that it was not repugnant to the Supremacy Clause of the United States

Constitution, this Court has jurisdiction to review that determination and that determination alone, by appeal. 28 U.S.C. §1257(2). To the extent that the Appellant is seeking review of the State court's finding of fact that the labor dispute in question was a lockout, and not a strike, this Court should decline to undertake an independent examination of the underlying facts. *Fry Roofing Company v. Wood,* 344 U.S. 157, 160 (1952); *Grayson v. Harris,* 267 U.S. 352, 358 (1924).

ARGUMENT

The issue which this case presents for review is whether federal labor policy prevents the States from enacting laws making workers who are unemployed due to a lockout eligible for unemployment compensation benefits. Pennsylvania's unemployment compensation law grants benefits to lockout victims but denies them to strikers. 43 P.S. §802(d). The case is properly before this Court on appeal because the Pennsylvania Supreme Court upheld the validity of the Pennsylvania law in the face of the Appellant's argument that the payment of benefits to workers involved in a lockout so upset the balance between the bargaining positions of labor and management as to impermissibly conflict with the dictates of the National Labor Relations Act. *Unemployment Comp. Bd. of Review v. Sun Oil Company of Pa.,* 476 Pa. 589, 383 A.2d 519 (1978).

This issue is but part of the broader question whether workers involved in labor disputes should be entitled to receive benefits from various social welfare legislation, be it unemployment compensation, welfare or food stamps. This has been a significant political issue since the early 1930's. *New York Telephone Co. v. N. Y. State Dept. of Labor,* 566 F.2d 388, 391 (2d Cir. 1977), and has never been squarely addressed by this Court. Twice in the early 1970's, this Court denied certiorari in cases which sought to enjoin the payment of welfare and unemployment compensation benefits to strikers under the laws of Massachusetts and Rhode Island, respectively. *ITT*

Lamp Division of International Telephone & Telegraph Corp. v. Minter, 435 F.2d 989 (1st Cir. 1970), *cert. den.* 402 U.S. 933 (1971); *Grinnell Corp. v. Hackett*, 475 F. 2d 449 (1st Cir. 1973), *cert. den.* 414 U.S. 858 (1973). In 1976, this Court dismissed an appeal from a decision of the Supreme Court of New Mexico upholding the validity of a New Mexico law which authorized the payment of unemployment compensation to strikers, for want of a substantial federal question. *Kimbell, Inc. v. Employment Security Commission*, 88 N.M. 596, 544 P.2d 1161 (1975), *aff'd* 429 U.S. 804 (1976).[3] This summary dismissal has subsequently been relied upon by the Third Circuit as authority to dismiss a New Jersey employer's challenge to the payment of welfare benefits to strikers in that State. *Super Tire Engineering Co. v. McCorkle*, 550 F.2d 903 (3d Cir. 1977). *See, Hicks v. Miranda*, 422 U.S. 332, 334 (1975). Thus, the law appeared to be that the payment of social welfare benefits to workers involved in a labor dispute had been an issue clearly left by Congress to State regulation.

On March 27, 1978, this Court granted certiorari in *New York Telephone Co. v. N. Y. State Dept. of Labor*, 566 F.2d 388 (2d Cir. 1977), *cert. granted* U.S. (1978). The issue in the *New York* case is similar to the instant case in that both cases involve a preemption challenge to State statutes which permit the payment of unemployment benefits to persons out of work due to labor disputes in some circumstances. Both the Second Circuit in *New York Telephone Co. v. N. Y. State Dept. of Labor*,

[3] This Court recently made clear that the payment of unemployment compensation benefits to strikers is not preempted by the Social Security Act. *Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471, 482 (1977).

566 F.2d 388 (2d Cir. 1977), and the Pennsylvania Supreme Court in the instant case concluded that the respective unemployment compensation statutes of New York and Pennsylvania were not preempted by the National Labor Relations Act.[4] Since this Court has agreed to hear *New York Telephone Co. v. N. Y. State Dept. of Labor*, No. 77-961, it is clear that the legal issue involved in both cases is significant and substantial.

The Unemployment Compensation Board of Review of Pennsylvania believes that the Pennsylvania Supreme Court correctly decided the instant case and should be affirmed by this Court. But, recognizing that this Court has granted certiorari in the *New York* case, and believing that the Pennsylvania statute in question is distinguishable in such a way as may be determinative of the outcome, the Board of Review respectfully submits that, should this Court decline to dispose of the instant case by summary affirmance, that oral argument in the instant case be scheduled in conjunction with that of the *New York* case.

[4] There are significant differences between the New York and Pennsylvania statutes. In New York, workers who are out of work because of a labor dispute, be it a strike or a lockout, are entitled to benefits after an eight-week waiting period has elapsed. N.Y. Lab. Law §§590.9, 592.1 (McKinney 1977). In Pennsylvania, workers who have been locked out by their employer are eligible for benefits from the outset of the work stoppage while workers who are out of work because they are on strike are not eligible at all. Pa. Stat. Ann., tit. 43, §802(d).

CONCLUSION

For the reasons set forth above, the Unemployment Compensation Board of Review respectfully suggests that the decision of the Pennsylvania Supreme Court be summarily affirmed. Alternatively, the Board of Review suggests that the case be set for briefing and that argument be scheduled for the same day as argument in *New York Telephone Co. v. N. Y. State Dept. of Labor*, No. 77-961.

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